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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 DAVID HARBORD and HATSUYO
12 HARBORD,

13 Plaintiff,

14 v.

15 MTC FINANCIAL INC., BAYVIEW
16 FINANCIAL LLC, BAYVIEW LOAN
17 SERVICING LLC, BAYVIEW
18 HOLDINGS, FARMS INC. CO. OF WA,
19 CHASE BANK, JP MORGAN
20 FINANCIAL, WELLS FARGO, and
21 VANGUARD GROUP,

22 Defendants.

CASE NO. 20-5080 RJB

ORDER ON EMERGENCY
MOTION

23 THIS MATTER comes before the Court on the Plaintiffs' "Emergency Motion to Stop
24 Action on February 2, 2020." Dkt. 2. The Court has reviewed the pleadings filed regarding the
motion and the remaining record and is fully advised.

On January 29, 2020, a "Complaint for a Civil Case Action of Harassments and
Damages," was filed by "H. Harbord," *pro se*. Dkt. 1. It is difficult to decipher, but it appears to
relate, in part, to foreclosure proceedings against David Harbord and Hatsuyo Harbord's real

1 property commonly known as 461 McFarland Drive, Sequim, WA. Dkt. 1. The pending
2 emergency motion was also filed on January 29, 2020. Dkt. 2.

3 **I. ALLEGATIONS IN COMPLAINT AND PENDING MOTION**

4 **A. ALLEGATIONS IN COMPLAINT**

5 The Complaint alleges that after the Plaintiffs requested information on their mortgage
6 from “Chase (Bank),” it transferred their mortgage to Bayview Financial LLC “without
7 disclos[ing] [Plaintiffs’] all of mor[t]gage information[]/documentation[.]” Dkt. 1, at 11. It
8 asserts that the Plaintiffs were planning to pay Chase with the money held in a 401k. *Id.* The
9 Complaint maintains that the 401k was “holded [sic] by J.P. Morgan/Wells Fargo/Vanguard.”
10 *Id.* It alleges that J.P. Morgan claimed there was no 401k account for the Plaintiffs and that
11 “Wells Fargo refused to disclose [Plaintiffs’] all of 401k documents.” *Id.* The Complaint asserts
12 that “Bayview Financial LLC/Bayview Loan Servicing LLC/Bayview Holdings” (collectively
13 “Bayview”) “refused to take regular payments and threatened to pay total mortgage amounts
14 (principal and interest). Then closed [Plaintiffs’] account.” *Id.* It maintains that Bayview paid
15 the property taxes and insurance on the property without the Plaintiffs’ consent. *Id.*, at 11-12.
16 The Complaint alleges that the Plaintiffs personally paid both the taxes and insurance and that
17 the county and insurance company were sending the extra money back. *Id.*, at 12. It states
18 “Notice of Trustees Sale documents 4 pages ???? [Plaintiffs] did not receive by [Bayview].” *Id.*
19 The Complaint alleges that the Plaintiffs “contacted Neang . . . Trustee Corp/17100 Gillette Ave
20 Irvine, CA . . .” and that Neang told the Plaintiffs to ask for a “(1) restatement quote with ‘rush’
21 in the letter, (2) address to send payment.” *Id.* It asserts that the Plaintiffs faxed the letter and “it
22 did not work.” *Id.* Plaintiffs tried again. *Id.* The Complaint maintains that on January 14, 2020,
23 they went to “MTC Financial Inc. dba Trustee Corps in Seattle, WA. Delores Constock state
24

1 that she received [their] fax.” *Id.* It asserts that the same day, the Plaintiffs tried to pay
2 \$3,815.52.” *Id.*, at 15. The Complaint alleges that “Dolores stated that [Plaintiffs] had to pay
3 accurate costs. Notice of Foreclosure estimated \$9,233.08 on January 27, 2020 was not accurate
4 amounts.” *Id.* It maintains that they were told “Delores could not accept amounts of \$9,233.08.”
5 *Id.* The Complaint alleges that Delores gave them the “Notice of Foreclosure” letter. *Id.*

6 The Complaint asserts that they returned to “MTC Financial” on January 17, 2020 to pay
7 \$9,233.08. *Id.*, at 15. It maintains that they were told they owed \$10,157.51. *Id.*, at 16. The
8 Complaint alleges that the Plaintiffs requested an itemized statement but were refused. *Id.* It
9 asserts that the “Notice of Foreclosure” letter demands an inaccurate amount in principal and
10 interest. *Id.*

11 The Complaint alleges that the Plaintiffs made a claim with “Farmers Insurance Co. of
12 WA” (“Farmers”) for snow damage in February 2019 for damage to their house. *Id.*, at 12. It
13 asserts that Farmers did not repair the damage. *Id.* at 13. The Complaint maintains that Farmers
14 also did not pay a claim on damage to a truck. *Id.*

15 Under the heading “Relief,” the Complaint asserts that the amount of principal and
16 interest is lower than MTC Financial and Bayview are demanding. *Id.*, at 17. It further states,
17 “MCT Financial and Bayview are ‘Action of Harassment.’ How they can swip [sic] [Plaintiffs’]
18 property for sale.” *Id.* The Complaint asserts that the Plaintiffs “would pay correct principal and
19 correct interest. But not losing [Plaintiffs’] house.” *Id.* It continues, “Stop Action on February 7,
20 2020. This kind of practice should be illegal.” *Id.*

21 **B. PENDING MOTION**

22 In the pending emergency motion, the Plaintiffs state that they asked MTC Financial to
23 disclose who has 100% deed holder for the subject property and were told “Bayview XXX.”
24

1 Dkt. 2, at 1. They assert that they asked “MTC Financial Inc. to disclose detail of items by each
2 categor[y],” but were refused. *Id.* They argue that they have paid all of the property taxes and
3 insurance. *Id.*, at 2. The Plaintiffs assert that “Farmers Ins. closed [Plaintiffs’] case without
4 fixing or repairs, illegal practice.” *Id.* They argue that other Defendants did not give them their
5 financial statements for their 401k and that Chase Bank did not disclose their mortgage
6 statements to them. *Id.* The Plaintiffs allege that Bayview refused to take a payment or give any
7 information. *Id.* They assert that “MTC Financial Inc. filed Trustee Sale. Trust Corps to correct
8 \$10,157.51 \$9,233.08.” *Id.* The Plaintiffs “request the Court to Stop Action on February 7, 2020
9 due to Action of Harassment.” *Id.*, at 3. This handwritten pleading includes both David Harbord
10 and Hatsuyo Harbord’s names at the conclusion, but it is unclear whether they both signed the
11 pleading. *Id.*

12 C. ORGANIZATION OF OPINION

13 This opinion will now discuss issues regarding jurisdiction and *pro se* representation, will
14 then review the Complaint, point out deficiencies in it, and note the possibility of leave to amend
15 the complaint. This opinion will then address the pending emergency motion.

16 II. DISCUSSION

17 A. JURISDICTION

18 Federal courts are courts of limited jurisdiction. Jurisdiction is a threshold issue that
19 must be raised *sua sponte*. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-95
20 (1998). A federal court must have subject matter jurisdiction, which can be established by either
21 the existence of a federal question or complete diversity of the parties. 28 U.S.C. § 1331 and
22 1332. A court is presumed to lack subject matter jurisdiction until a plaintiff establishes
23
24

1 otherwise. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994); *Stock West,*
2 *Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989).

3 It appears that the Court may not have subject matter jurisdiction in this case. Plaintiffs
4 do not identify a federal claim upon which they are seeking relief, so the Court does not have
5 federal question jurisdiction. The Plaintiffs assert that this Court has jurisdiction under 28 U.S.C.
6 §1332, diversity of citizenship. Dkt. 1. The Complaint does not clearly point to the citizenship of
7 all the Defendants.

8 The Plaintiffs should be ordered to file an amended complaint, if they wish, which
9 establishes the citizenship of all Defendants. Failure to do so may result in dismissal of the case.

10 **B. PRO SE REPRESENTATION OF DAVID HARBORD**

11 *Pro se* Plaintiffs are prohibited “from pursuing claims on behalf of others in a
12 representative capacity. *Sinmon v. Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008).

13 It appears that Hatsuyo Harbord was the only one to sign the Complaint. She is not a
14 licensed attorney and cannot represent David Harbord. To the extent she attempts to make
15 claims for him in the Complaint, those claims should be dismissed.

16 **C. REVIEW OF THE COMPLAINT AND LEAVE TO AMEND**

17 The Court has carefully reviewed the Complaint in this matter. Because the Plaintiffs
18 filed this Complaint *pro se*, the Court has construed the pleadings liberally and has afforded
19 Plaintiffs the benefit of any doubt. *See Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621,
20 623 (9th Cir.1988). Fed. R. Civ. P. 8(a) provides:

21 **Claim for Relief.** A pleading that states a claim for relief must contain:
22 (1) a short and plain statement of the grounds for the court's jurisdiction, unless
the court already has jurisdiction and the claim needs no new jurisdictional
23 support;
(2) a short and plain statement of the claim showing that the pleader is entitled to
24 relief; and

1 (3) a demand for the relief sought, which may include relief in the alternative or
2 different types of relief.

3 While the pleading standard under Rule 8 “does not require ‘detailed factual allegations,’ it
4 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft*
5 *v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Although pleadings drafted by a party proceeding *pro se*
6 must be read more liberally than pleadings drafted by counsel, a *pro se* litigant is not excused
7 from knowing the most basic pleading requirements. *See American Ass’n of Naturopathic*
8 *Physicians v. Hayhurst*, 227 F.3d 1104, 1107-08 (9th Cir. 2000).

9 The Complaint is difficult to understand and is not “a short and plain statement of the
10 claim showing that the pleader is entitled to relief,” as is required by Fed. R. Civ. P. 8 (a)(2).
11 The Plaintiffs’ claim for “action of harassment” does not state a cognizable claim. The
12 Complaint does not make a claim for a breach of contract, a tort, nor does it allege violation of a
13 constitution, or a federal or state statute. Accordingly, it fails.

14 Unless it is absolutely clear that no amendment can cure the defect, a *pro se* litigant is
15 entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal
16 of the action. *See Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir.1995). Plaintiffs should be
17 granted leave to file a proposed amended complaint to attempt to state a claim upon which relief
18 can be granted on or before February 21, 2020. Plaintiffs should clearly comply with Rule 8 in
19 any proposed amended complaint. Failure to file a proposed amended complaint may result in
20 dismissal of the case.

21 **D. EMERGENCY MOTION**

22 In their emergency motion, the Plaintiffs seek an order from the Court stopping the
23 February 7, 2020 foreclosure. Dkt. 2. This motion should be construed as a temporary
24 restraining order (“TRO”).

1 Under Fed. R. Civ. P. 65 (b) (1) a TRO may be issued by the court “without written or
2 oral notice to the adverse party or its attorney only if: specific facts in an affidavit or a verified
3 complaint clearly show that immediate and irreparable injury, loss, or damage will result to the
4 movant before the adverse party can be heard in opposition” and the movant “certifies in writing
5 any efforts made to give notice.” In order to get a TRO, a party must also establish the elements
6 of a preliminary injunction: that they are likely to success on the merits, that they are likely to
7 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in
8 their favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council,*
9 *Inc.*, 555 U.S. 7, 20 (2008).

10 The emergency motion (Dkt. 2) should be denied without prejudice. Even if the
11 Plaintiffs could show immediate and irreparable injury from the loss of their home, they have not
12 “certifie[d] in writing any efforts made to give notice” to the Defendants. Further, the Plaintiffs
13 have not identified any legal claim that would entitle them to the relief they seek. They have not
14 shown a likelihood of success on the merits or that the balance of equities tips in their favor.
15 They have not shown an injunction is in the public interest.

16 **E. CONCLUSION**

17 If the allegations in the Complaint are to be credited, it appears that this foreclosure
18 dispute may be a result of a misunderstanding. The Plaintiffs should be given leave to file a
19 proposed amended complaint, if they wish, to attempt to establish this Court’s jurisdiction, to
20 clearly indicate whether David Harbord is prosecuting this case as a Plaintiff, and to attempt to
21 state a claim for which relief can be granted. While the Court cannot grant the emergency motion
22 the Plaintiffs seek at this time, further communication between the Plaintiffs and Defendants may
23 be beneficial.

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It is **ORDERED** that:

- The proposed amended complaint, if any, **IS DUE by February 21, 2020**; and
- The Emergency Motion to Stop Action on February 2, 2020 (Dkt. 2) **IS DENIED WITHOUT PREJUDICE**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 30th day of January, 2020.

Robert Bryan

ROBERT J. BRYAN
United States District Judge